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DEPARTMENT OF ENERGY

10 CFR Part 460

[EERE-2009-BT-BC-0021]

RIN 1904-AC11

Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is publishing a notice of proposed rulemaking (NPR) to amend the compliance date for its manufactured housing energy conservation standards. Currently, manufacturers must comply with these standards on and after May 31, 2023. DOE is proposing to delay this compliance date to allow DOE more time to establish enforcement procedures that provides clarity for manufacturers and other stakeholders.

DATES: DOE will accept comments, data, and information regarding the NPR received no later than April 24, 2023. See section IV, “Public Participation,” for details.

ADDRESSES: The docket for this rulemaking, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket?D=EERE-2009-BT-BC-0021. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

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I. Background

The Energy Independence and Security Act of 2007 (“EISA,” Pub. L. 110-140) directs the U.S. Department of Energy (“DOE” or, in context, “the Department”) to establish energy conservation standards for manufactured housing (“MH”).¹ (42 U.S.C. 17071) Manufactured homes are constructed according to a code administered by the U.S. Department of Housing and Urban Development (“HUD Code”). 24 CFR part 3280. *See also generally* 42 U.S.C. 5401-5426. Structures, such as site-built and modular homes, that are constructed to the state, local or regional building codes are excluded from the coverage of the HUD Code.²

EISA directs DOE to base its standards on the most recent version of the International Energy Conservation Code (“IECC”) and any supplements to that

¹ The National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, defines “manufactured home” as “a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary [pursuant to 24 CFR 3282.13] and complies with the standards established under this title [24 CFR part 3280]; and except that such term shall not include any self-propelled recreational vehicle.” 42 U.S.C. 5402(6).

² *See* 42 U.S.C. 5403(f). *See also* 24 CFR 3282.12.

document, except in cases where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs. (*See* 42 U.S.C. 17071(b)(1))

On June 17, 2016, DOE published in the *Federal Register* a notice of proposed rulemaking (“NOPR”), including proposals recommended by the negotiated rulemaking working group for manufactured housing. 81 FR 39756 (“June 2016 NOPR”). DOE received nearly 50 comments on the proposed rule during the comment period. In addition, DOE also received over 700 substantively similar form letters from individuals.

On August 3, 2018, DOE published a Notice of Data Availability (“NODA”), stating it was examining possible alternatives to those proposed in the June 2016 NOPR and seeking further input from the public, including on first-time costs related to the purchase of these homes. 83 FR 38073 (“August 2018 NODA”). Prior to the NODA, in December of 2017, the Sierra Club filed a suit against DOE in the U.S. District Court for the District of Columbia, alleging that DOE had failed to meet its statutory deadline for establishing energy efficiency standards for manufactured housing. *Sierra Club v. Granholm*, No. 1:17-cv-02700-EGS (D.D.C. filed Dec. 18, 2017). In November 2019, the court in the Sierra Club litigation entered a consent decree in which DOE agreed to complete the rulemaking by stipulated dates.

After evaluating the comments received in response to the June 2016 NOPR and the August 2018 NODA, DOE published a supplemental NOPR (“SNOPR”) on August 26, 2021, in which DOE proposed energy conservation standards for manufactured homes based on the 2021 IECC. 86 FR 47744 (“August 2021 SNOPR”). DOE’s primary proposal in the August 2021 SNOPR was a “tiered” approach based on the 2021 IECC. The “tiered” approach identifies a subset of less stringent energy conservation standards for certain manufactured homes (based on retail list price) in light of the cost-

effectiveness considerations required by statute. DOE’s alternate proposal was an “untiered” approach, wherein energy conservation standards for all manufactured homes would be based on certain thermal envelope components and specifications of the 2021 IECC. Both proposals replaced the June 2016 NOPR proposal. *Id.* DOE sought comment on these proposals, as well as alternate thresholds, including a size-based threshold (*e.g.*, square footage, number of sections) and a region-based threshold, and alternative exterior wall insulation requirements (R-21) for certain HUD zones. *Id.*

On October 26, 2021, DOE published a NODA regarding updated inputs and results of the analyses presented in the August 2021 SNOPR (both “tiered” and “untiered” approaches), including a sensitivity analysis regarding an alternative sized-based tier threshold and an alternate exterior wall insulation requirement (R-21) for certain HUD zones. 86 FR 59042 (“October 2021 NODA”). In addition, DOE reopened the public comment period on the August 2021 SNOPR through November 26, 2021. DOE sought comments on the updated inputs and corresponding analyses, encouraged stakeholders to provide additional data to inform the analyses, and stated it might further revise the rulemaking analysis based on new or updated information. *Id.*

On May 31, 2022, DOE published a final rule codifying the current energy conservation standards for manufactured housing in a new part of the Code of Federal Regulations (“CFR”) under 10 CFR part 460, subparts A, B, and C (“May 2022 Final Rule”). 87 FR 32728. Subpart A of 10 CFR part 460 presents generally the scope of the rule and provides definitions of key terms. Subpart B established new requirements for manufactured homes that relate to climate zones, the building thermal envelope, air sealing, and installation of insulation, based on certain provisions of the 2021 IECC. Subpart C established new requirements based on the 2021 IECC related to duct sealing; heating, ventilation, and air conditioning (“HVAC”); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

Under the energy conservation standards, the stringency of the requirements under subpart B are based on a tiered approach depending on the number of sections of the manufactured home. Accordingly, two sets of standards were established in subpart B (*i.e.*, Tier 1 and Tier 2). Both Tier 1 and Tier 2 incorporate building thermal envelope measures based on certain thermal envelope components subject to the 2021 IECC that DOE determined applicable and appropriate for manufactured homes. Tier 1 applies these building thermal envelope provisions to single-section manufactured homes, but only includes components at stringencies that would increase the incremental purchase price by less than \$750 in order to address affordability concerns that were raised by HUD and other stakeholders during the consultation and rulemaking process. Tier 2 applies these same building thermal envelope provisions to multi-section manufactured homes but at higher stringencies specified for site-built homes in the 2021 IECC, with an alternate exterior wall insulation requirement (R-21) for climate zones 2 and 3 based on consideration of the design and factory construction techniques of manufactured homes, as presented in the August 2021 SNOPR and October 2021 NODA. Manufacturers can comply with the building thermal envelope requirements through a prescriptive pathway (*e.g.*, using materials with specified ratings) or a performance pathway based on overall thermal transmittance (U_o) performance. *See* 10 CFR 460.102(c). Further, the energy conservation standards for both tiers also include duct and air sealing, insulation installation, HVAC and service hot water system specifications, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions, based on the 2021 IECC. DOE concluded that this approach is cost-effective based on the expected total life-cycle cost (“LCC”) savings for the lifetime of the home associated with implementation of the energy conservation standards. *See e.g.*, 87 FR 32742.

Relevant to this NOPR, in the May 2022 Final Rule, DOE adopted a compliance date such that the standards would apply to manufactured homes manufactured on or

after one year after the publication date of the final rule in the *Federal Register*, which is May 31, 2023. In doing so, DOE noted its belief that many manufacturers already have experience complying with efficiency requirements similar to what DOE required in the May 2022 Final Rule based on manufacturers' previous experience with HUD *Uo* requirements and ENERGY STAR Version 2 efficiency requirements for homes produced on or after June 1, 2020. 87 FR 32759. DOE did not address enforcement of the standards in the May 2022 Final Rule. Even so, manufacturers are able to comply with the standards as they are. In fact, DOE noted that many of the requirements in the standards would require minimal compliance efforts (*e.g.*, documenting the use of materials subject to separate Federal or industry standards, such as the R-value of insulation or U-factor values for fenestration). 87 FR 32758, 32790. Nevertheless, DOE noted in the May 2022 Final Rule that it may address compliance and enforcement issues and procedures in a future agency action (*See* 87 FR 32757-32758), which is discussed further in sections II and III of this document.

II. Need to Amend Compliance Date

DOE has not yet issued procedures for reviewing and enforcing against noncompliance with the manufactured housing energy conservation standards in 10 CFR part 460. While manufacturers are capable of complying with the DOE standards as they are with minimal efforts, DOE nevertheless recognizes that enforcement procedures would help provide clarity to manufacturers that are new to DOE's regulatory program.

Accordingly, DOE will establish enforcement procedures in the coming months. This will provide clarity to manufacturers and consumers regarding DOE's means of enforcing the standards and how DOE will evaluate compliance. A delay of the current May 31, 2023, compliance date is therefore necessary to ensure that DOE can receive and incorporate meaningful stakeholder feedback into its enforcement procedures prior to the Rule's compliance date.

III. Discussion of Proposal

In this NOPR, DOE is proposing, under its authority to establish energy conservation standards for manufactured housing (42 U.S.C. 17071), to extend the compliance date for the manufactured housing energy conservation standards in 10 CFR part 460 until DOE's forthcoming enforcement procedures take effect. More specifically, DOE is proposing to require compliance with the Tier 1 standards 60 days after publication of its final enforcement procedures, and compliance with the Tier 2 standards 180 days after publication of its final enforcement procedures. With respect to the requirements of subpart C of part 460, DOE would similarly expect compliance with those provisions 60 days after publication of its final enforcement procedures for Tier 1 homes, and 180 days after publication of its final enforcement procedures for Tier 2 homes. DOE believes enforcement procedures will provide additional clarity to manufacturers and consumers regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards. Delaying the compliance date until after the enforcement procedures are effective will provide manufacturers time to understand DOE's enforcement procedures and prepare their operations to ensure compliance with DOE's standards. DOE acknowledges that some of the consumer benefits (*e.g.*, cost savings) provided by DOE's standards will not be realized during the delay period. However, these benefits may not be fully realized if manufacturers lack clarity on how best to comply with DOE's standards or what to expect from DOE's enforcement of such standards. DOE believes that the absence of a clear, workable enforcement framework for manufacturers jeopardizes the full realization of the consumer benefits that will result from full implementation of the standards. This temporary delay is necessary to ensure the realization of the consumer benefits of DOE's standards. Accordingly, DOE proposes to delay the May 31, 2023, compliance date for the standards of 10 CFR part 460 until 60 days after DOE's publication of its final enforcement procedures for the Tier 1 standards,

and 180 days after DOE's publication of its final enforcement procedures for the Tier 2 standards.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The www.regulations.gov webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received

through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (“faxes”) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 460

Administrative practice and procedure, Buildings and Facilities, Energy conservation, Housing standards, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 16, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on March 17, 2023.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 460 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

1. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et. seq.*

2. Revise §460.1 to read as follows:

§460.1 Scope.

This subpart establishes energy conservation standards for manufactured homes as manufactured at the factory, prior to distribution in commerce for sale or installation in the field. A manufactured home subject to the requirements of §460.4(b) that is manufactured on or after *[date 60 days after the publication of the final rule]* must comply with all applicable requirements of this part. A manufactured home subject to the requirements of §460.4(c) that is manufactured on or after *[date 180 days after the publication of the final rule]* must comply with all applicable requirements of this part.